IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 840 of 1984

with

FIRST APPEAL No 295, 296 and 297 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI AMBALAL PATEL

Versus

ADDL SPL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 840 of 1984
   MR SH SANJANWALA for Petitioner No. 1-4
   Mr. M.K. Patel, AGP for Respondent No. 1
2. First Appeal No. 295, 296 and 297 of 1985
   MR PV NANAVATI for Petitioner No. 1
   Mr. M.K. Patel, AGP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 03/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Shri P.V. Nanavati for the appellants in First Appeal Nos. 295, 296 and 297, all of 1985. Learned senior advocate Mr. Sanjanwala is appearing for the appellants in First Appeal No. 840 of 1984. Learned AGP Mr. M.K. Patel is appearing for the respondents in this group of appeals.

2. Brief facts of the present four appeals are as under:

The Director of Education, State of Gujarat, Ahmedabad has, by letter dated 27th May, 1970, requested the Collector, Ahmedabad to acquire the lands bearing survey No. 16/1 Part, 17/1, 17/2, 18 Part, 20/1, 21, 26, 27, 28, 30/1 Part, 31/1 Part of Vastrapur, Taluka City District Ahmedabad for the Indian Institute of Management, Ahmedabad ("IIMA" for short). Out of the lands to be acquired for the IIMA, some lands were in the green belt and the some of the lands were reserved for the Gujarat Housing Board in sanctioned development plan of the Ahmedabad City. Thereafter, by notification dated 15th January, 1971, the Government varied the development plan under section 10(A) of the Bombay Town Planning Act, 1954 and the above lands were reserved for the IIMA. Above proposal was scrutinized and, thereafter, notification under section 4 of the Land Acquisition Act, 1894 dated 4th February, 1971 was published in the Gazette of the Government of Gujarat dated 11th February, 1971 on page 998 and 999. Necessary notification under section 6 dated 17th December, 1973 was published in the Gazette of the Government of Gujarat dated 3rd January, 1974 at page 80 and 81. Thereafter, notices were issued by the department to the persons interested. The persons interested filed their claim statement before the Additional Special Land Acquisition Officer, Ahmedabad. The Additional Special Land Acquisition Officer, Ahmedabad, after hearing the present appellant, declared his award dated 22nd October, 1980. As the appellants claimants were dissatisfied with the said award dated 22nd October, 1980, under section 18 of the Land Acquisition Act, 1894, at their instance, reference has

been made by the Special Land Acquisition Officer to the reference Court. Before the Reference Court namely City Civil Court at Ahmedabad, compensation case No.23 of 1981 to 28 of 1981, 2 of 1982 and 3 of 1982 were filed by the special land acquisition officer at the instance of the original claimants which were decided by the Reference Court by common award dated 11th April, 1983. Amongst the group of said compensation case, four original claimants have challenged the common award passed by the Reference Court in present group of four appeals. First Appeal No. 840 of 1984 has been filed challenging the award made by the reference Court in relation to compensation case no. 23 of 1981 relating to the land bearing survey no. 21 admeasuring 19931 square meters. First Appeal No. 295 of 1985 has been filed challenging the award made by the reference Court in relation to compensation case no. 24 of 1981 relating to the land bearing survey no. 17/2 admeasuring 2985 square meters. In respect of the award made by the reference court in relation to compensation case no. 27 of 1981 relating to the land bearing survey no. 26 ad measuring 25394 square meters, first appeal no. 296 of 1985 has been filed. In respect of the compensation case no. 28 of 1981 relating to the land bearing Survey No. 17 / 2 Part ad measuring 1492 square meters, first appeal no. 297 of 1985 has been filed.

3. Today, when the present appeals were taken up for final hearing, learned advocate Mr. P.V. Nanavaty has appeared for the appellants in First Appeal No. 295, 296 and 297 of 1985. Learned AGP Mr. M.K. Patel has appeared for the respondents in this group of four appeals. We have perused the original record of the special land acquisition officer as well as the award made by the reference court.

4. Learned advocate Mr.Nanavati has contended that the reference court has not properly appreciated the settled legal principles regarding valuation of the lands in land acquisition proceedings; that the trial court has also not properly appreciated various sale instances cited on behalf of the appellants and proved on the record of the case; that the trial court has erred in awarding additional compensation at the rate of Rs.12.50 ps. per square meters only in respect of the lands of the appellants; that the trial court ought to have valued the land of the appellants at the rate of Rs.70.00 per sq. mtr. which was the market value of the lands on the date of notification under section 4 i.e. 4.2.1971. According to him, the reference court has erred in granting additional compensation at Rs.43.00, Rs.47.50

ps. to the appellants and such an award of additional compensation is on its lower side. He has also submitted that the appellants are also entitled to get solatium at the rate of 30 per cent on the total amount of compensation and interest at the rate of 9 per cent per annum on the total amount of compensation including the amount of solatium as per the amendment made in the Land Acquisition Act, 1894 in the year 1984.

5. On the other hand, learned AGP Mr. M.K. Patel appearing for the respondents has submitted that the reference court has rightly appreciated the oral evidence led before him and has also rightly appreciated the sale instances which were produced before him and ultimately the reference court has rightly considered Exh.31, sale instance dated 11.5.1970 which was prior to the notification under section 4 of the Land Acquisition Act, 1894 dated 4th February, 1971. He has also submitted that the detailed award has been passed by the reference court after discussing the situation of each survey numbers and the reference court was right in appreciating the evidence on record and the award of additional compensation made by the reference Court is just and proper and, therefore, these appeals are required to be rejected.

6. We have perused the award made by the Special Land Acquisition Officer and the award of additional compensation made by the reference court pursuant to the reference made by the Special Land Acquisition Officer at the instance of the original claimants. In para 30 of its award , the reference court has considered the situation of each survey number in detail in respect of the present four appeals relating to survey no. 26, 21 and 17/2. The reference Court has observed that the land bearing survey no. 16 and 17 have best situation and the land bearing survey no. 26 and 27 have the advantage of frontage on both the sides and has, thereafter, come to the conclusion that the land bearing survey no. 16 and 17 is having the benefit of two public roads and, therefore, its situation is also comparable with the land bearing survey no.21 which is adjoining to the land bearing survey no. 17 towards the village site of Vastrapur, and, therefore, the Reference Court was of the view that these three survey numbers can be treated at par and are entitled to more amount of compensation than the others. In short, according to the reference court, the land bearing survey no. 16, 17 and 21 are entitled for more amount of compensation than the other survey numbers. The reference court has, thereafter, considered the value of the other survey numbers as less than survey

no. 16, 17 and 21 as well as survey no. 20 and survey no. 26, 27 and 28. Therefore, for the purpose of awarding compensation, the reference court has considered the value of the land bearing survey no. 16, 17 and 21 should be same by one class and the value of the land bearing survey no. 20 should be less than the said three survey numbers and the value of the land bearing survey no. 26, 27 and 28 should be the same but less than the land of survey no. 20; value of the land bearing survey no. 18, 30 and 31 should be the same but it should be less than survey no. 26, 27, 28, 20, 16, 17 and 21.Therefore, the reference court has made independent class looking to the situation of each survey number and some of the survey numbers are comparable and, therefore, rate of compensation has accordingly been awarded by the reference court and as regards other survey numbers, award of additional compensation was little less than the earlier survey numbers. The reference court has considered the evidence of Kamruddinbyai Exh. 25 for the purpose of appreciating the situation of the acquired land. It was deposed by the said witness before the reference Court at Exh. 25 that the IIMA was already existing and that the acquired lands have been acquired for the purpose of further development of the IIMA. According to his deposition, Public Road from Vastrapur to Ambawadi was already existing before the present acquisition; national highway was also touching Vastrapur and it was in existence before the acquisition; ATIRA was also very near to village site of Vastrapur; Towards the opposite side of the IIMA, separate from Vastrapur to Ahmedabad side leaving the ATIRA, towards the north, there is Gujarat University Complex. According to his evidence before the reference court, ATIRA and the Gujarat University have come into existence much prior to the acquisition of the lands in question i.e. from year 1950 to 1955. It was also deposed by him before the reference court that the residential cooperative societies were also existing much prior to the acquisition of the lands in question on survey no. 1,2 and 3 of village Vastrapur. The reference court has also considered the map produced before it at Exh. 26 relating to survey no. 1,2 and 3 which were found just touching the main road from village Vastrapur proceeding towards Ambawadi on the other side of the acquired lands. Survey no. 2 and 3 are just opposite to survey no. 21. The reference court has also considered that in survey no. 125, 126 and 127, residential cooperative housing societies were constructed prior to 1971 and looking to the map at Exh. 26, survey no. 125, 126 and 127 are to the waste of the village site leaving the land bearing survey no. 138 and 137; said survey numbers can be said

to be far away from the acquired lands. It was also deposed by the said witness before the reference court that on both the sides of the national highway from Vastrapur to Gandhinagar, Bungalows were already constructed prior to 1971; road in front of survey no. 21, 20, 26 and 27 further proceeds towards Vejalpur. This road is approaching the main road from Ambawadi to Satellite Jodhpur Tekra. This road from Ambawadi to Satellite Jodhpur Tekra also approaching the Sarkhej Gandhinagar National Highway prior to 1971. According to his evidence, City Buses were also running upto Satellite Jodhpur Tekra since prior to 1971. He has also deposed that prior to the acquisition of the lands in question, Ahmedabad City Buses were coming to village Vastrapur. As per the map Exh. 26, in land bearing survey no. 83, 84, there is Azad Society wherein there are about 75 to 100 bungalows since 1947-48; acquired lands are to the north of the Azad Society; there is also Government L Colony and Sahajanand College which were in existence since prior to 1971. All these aspects were examined and considered by the reference court and after considering the evidence of Kamruddinbhai at Exh. 25, the reference court has observed that the lands bearing survey no. 16, 17 and 21 have much better situation than survey no. 83, 84 on which there is Azad Society but it is not so in respect of the rest of the acquired survey numbers. However, the reference court has also observed that it is very certain that all these areas have been developed for residential purpose and residential societies have been constructed even to the west of the village site of Vastrapur.

7. After considering the situation of the lands in question, in respect of each survey numbers and also after considering the oral evidence of the witness Kamruddin at Exh. 25, the reference court has examined the sale instances which were produced before it by the appellants. In para 34 of its award, the reference court has also considered the sale instances which were prior to the notification under section 4 of the Land Acquisition Act, 1894 or subsequent to the said notification under sec. 4 concerning the lands under acquisition. Ultimately, it was observed by the reference court that it cannot be denied that while deciding the cases for compensation, little guess work is inevitable but such guess work must be based on the legal evidence before the reference court. While keeping in view the principles of fixing the market value of the land with reference to comparable sale instances, the reference court has observed the features helpful to consider the comparable instances. The reference court

has also considered the said features as under:

(1) When the sale is within reasonable time of the date of the notification under section 4 of the Land Acquisition Act;
(2) It should be a bona fide transaction;
(3) It should be of the lands acquired or of the land adjacent to it;
(4) It should possess similar advantage or disadvantage. The reference court was of the view that when all these features or the factors are present, it could merit consideration as comparable sale.

8. The reference court has examined the sale instances which were produced by the appellants before it in light of the features decided by the reference court on the basis of the principles. The reference court has considered one sale deed dated 11.5.1970 Exh. 31 in respect of sub plot no.2 of final plot no. 250 Part (old survey no. 65 ad measuring about 1025 square yards and the said land has been sold at the rate of Rs.57.60 per square meter. The appellant has also examined Jagdish M. Shah to prove the sale deed before the reference court at Exh. 55. Said sale deed was pre notification and the acquired lands are at some distance from this plot as the acquired lands are close to the village site of Vastrapur and the market value of this plot would, therefore, be more than the market value of the acquired lands. Thereafter, in para 39 of the award, the reference court has considered the sale instance namely sale deed Exh. 30 dated 28th October, 1970 by which sub plot no.4 of final plot no. 5 (old survey no. 59-1-2/1) ad measuring about 1203 square yards has been sold at the rate of Rs. 42.29 ps. per square yard which comes to Rs.50.00 per sq. meter. The reference court has observed that this plot is a part of the survey no. 59. In the map Exh. 26, survey no. 59 is shown as Narmol, part of which was a pond and it was observed that it appears that this pond must have been filled up; converted into plots and the land is sold as plots. It was observed that the level of the land bearing survey no.59 is lower than the adjoining land.

Then, the reference court has considered the sale instance, a sale deed Exh. 33 dated 29.11.1971 by which sub plot no. 13 of final plot No.24 (old survey no.59-1-1) admeasuring about 505 sq. yard has been sold at the rate of Rs.50.00 per sq. yard which comes to Rs.60.00 per sq. meter which sale deed was proved by the evidence of Dharamchand Ramanlal examined at Exh. 47.

After considering the said sale instance and the oral evidence at Exh. 47, the reference court has observed that it is proved that the said plot is purchased at the market rate; this plot is also a part of survey no.59 about which reference was made by the reference court in the earlier part of the award; survey no.59 is of lower level than the adjoining plots and has also observed that the said sale deed was after a period of nine months from the date of notification under section 4 of the Act and, thus, was a post notification instance of sale.

Thereafter, the reference court has considered the sale instance namely sale deed Exh. 37 dated 17.6.1972 in respect of sub plot no.1 final plot no. 1 forming part of the old survey no. 69/1 which was proved by Kanubhai Dahyabhai examined at Exh. 29, an employee of INdubhai Dahyabhai, purchaser. The reference court, after examining the sale deed Exh. 37 and the evidence of the witness at Exh. 29, has observed that this land has been sold at the market rate. It has also been observed by the reference court that in the map Exh. 26, survey no. 69 is adjoining to survey no. 70 which is below survey no. 66 which is below survey no. 65 referred to by the reference Court earlier; survey no. 69 abuts on the public road survey no. 70 is the last of the limit of village Vastrapur. It has been observed that the survey no. 69 is interior to the main road Ambawadi to Vastrapur via polytechnic. The land survey no. 69 is interior to survey no. 65 which is abutting the public road towards Vastrapur and can be said to have better position than the acquired lands which are close to village Vastrapur. On the basis of these considerations, the reference court has observed that the market value of the acquired lands ought be lesser than the price of survey no. 69. It was also observed that the said sale instance was after about 11 months (upto the date of agreement to sell) after the notification under section 4 of the Act and, thus, a post notification instance of sale. Thereafter, the reference court has also considered the sale instance namely sale deed Exh. 35 dated 17.1.1972 in respect of sub plot no.4 of final plot no. 9 (part of old survey no.59-1-1) ad measuring about 533 square yards at the rate of Rs.50.00 per sq. yard which comes to Rs.60.00 per sq. meter. Said sale deed was proved by Vinodbhai J. Jhaveri, purchaser examined at Exh. 51. After considering his oral evidence as well as the sale deed Exh. 35 dated 17.1.1972, the reference court has come to the conclusion that the price reflected in the said sale deed exh. 35 is the market price; said plot is a part of survey no. 59-1-1 which is a part of survey no. 59 as stated

earlier by the reference court in its award, survey no.59 is a pond; said plot is on the public road from AMbawadi side to village Vastrapur and the sale deed being dated 17.1.1972 is a post notification instance of sale of the land away from the acquired lands. Thereafter, the reference court has considered the sale instance namely sale deed dated 18.1.1972 in respect of final plot no. 50 (old survey no. 61/1) admeasuring 662 square yards at the rate of Rs.48.83 ps. per sq. yard which comes to Rs.58.80 ps. per sq. meter, proved by oral evidence of Mayank Ratilal examined at Exh. 46. He has deposed before the reference court that this land was purchased for Bankim Society; when the land was purchased, he was not a member of the said society but is at present a member of the managing committee; he became a member of the said society in the year 1974. He has not taken any part in the sale transaction of this plot. On the basis of his oral evidence, it was observed by the reference court that he was not present at the time of execution of the said sale deeds and the claimants have not examined any witness who participated in the process of purchase of the said land and thus it is not proved that the rate reflected in the said sale deed Exh. 32 was the market rate on the date of the sale deed. On that ground, the reference court has come to the conclusion that the said sale deed exh. 32 cannot be relied upon as an instance of sale.

Thereafter, the reference court has also considered a sale instance namely sale deed Exh. 34 in respect of the plot no. 1-E of sub plot no.1 of final plots no.22, 23 and 24 (old survey No. 60/1 and 60/2) ad measuring about 470 sq. yards at the rate of Rs.48.93 ps. per sq. yard which comes to Rs.59.00 per sq. meter, proved by Hasmukhbhai T. Soni, the purchaser examined at Exh. 45. After appreciating his oral evidence and the said sale deed Exh. 34, the reference court has come to the conclusion that the said sale deed Exh. 34 reflects the market rate; now looking to the map Exh. 26, survey No. 60 of which survey no. 60-1 and 60-2 seem to be the part is situated just adjoining to the survey no. 59 to the south and thus, survey no. 60 is in the interior; the acquired lands are far away from survey no. 60; moreover, the sale deed Exh. 34 being dated 18.2.1972 is a post notification instance of sale ; it is after about an year to the publication of section 4 notification. Then, the reference court has examined the sale instance namely sale deed Exh. 36 dated 2.3.1972 of sub plot no.3 of final plot no.4 (old surveyno.59-1-1) in respect of land admeasuring 476 sq. yards at the rate of Rs.50.00 per sq. yard which comes to Rs.60.00 per sq.

meter. Said sale deed was proved by Bipinchandra Hiralal, the purchaser who was examined at Exh. 41 before the reference court. After examining the said sale instance and the oral evidence of Shri Bipinchandra at Exh. 41, the reference court has observed that this plot is also nearer to Ahmedabad than the acquired lands; in other words, the acquired lands are far away from this land on the same road; it may be stated that this sale deed is also post notification instance of sale and, therefore, the reference court has not considered the same. Thereafter, the reference court has also considered the sale instance namely sale deed Exh. 39 dated 28.3.1972 in respect of final plot no.64 (Part of old survey no. 61/2) in respect of 623 sq. yards at the rate of Rs.75.00 per sq. yard, proved by Pravinchandra Shantilal Shah examined at Exh. 44. After appreciating his oral evidence, the reference court observed that from his evidence, it is borne out that he did not take any part for the purchase of the land for the society since he was not a member of the said society at all and become a member thereafter and thus from the evidence of this witness, it is not proved that the price reflected in the sale deed Exhibit 39 is the market price. Therefore, this instance of sale cannot be relied upon. Thereafter, the reference Court has considered the sale instance namely sale deed Exh. 38 dated 5.8.1972 of final plot no. 508 part (old survey no. 64-2-1 and 64-3-1, 67 and 68) in respect of 592 sq. yards at the rate of Rs.60 per sq. yard which comes to Rs.72 per sq. meter, proved by Naushir Manekji examined at Exh. 53. In his evidence, said witness has admitted before the reference court that it is at a distance of about 3 kms from the acquired lands and the advocate for the claimants appearing before the reference court has also fairly conceded that the claimants are not relying upon the said sale instance Exh. 38. In view of that, same was not considered by the reference court.

After considering the sale instances as aforesaid namely pre notification instances of sale Exh.30 and 31 as well as the post notification instances of sale at Exh. 3, 37, 35, 32, 34, 36, 39 and 38, the reference court observed that the sale deed Exh.31 can be said to be a comparable instance of sale; the sale deed Exh. 31 is within a reasonable time of the date of notification under section 4 of the Act. It was also observed by the reference court that it appears to be a bona fide transaction; it is also in respect of the land nearer to the acquired lands. Therefore, considering sale deed Exh.31 as comparable instance of sale, the reference court observed that the acquired lands are away from the

same and towards Vastrapur, its pice is bound to be less than the price of the land stated in Exh. 31. The reference court, therefore, held that the compensation to be awarded in respect of survey no. 16-1, 17-1 and 21 should be Rs.47.60 ps. per sq. meter and to put a round figure at Rs.47.50 ps. per sq. meter. It has also been observed by the reference court that the price of the survey no.20/1 should be something less than the aforesaid three survey numbers and, therefore, the reference court fixed it at Rs.45.00 per square meter as market price. It fixed the price of survey no. 26, 27 and 28 less than survey no. 20 at Rs.43.00 per sq. meter and as regards last group of survey no.18 Part,30/1, 31/1, fixed the price at Rs. 40.00 per square meters and held that the claimants are entitled for additional compensation accordingly and made the award.

We ourselves have perused the award made by the Additional Special Land Acquisition Officer as well as the reference court. According to our opinion, the reference court has rightly considered each sale deed in light of the situation of the land involved in the concerned sale deed. The reference court has also rightly considered each sale deed which specified the market price of the land in question. The reference court has also rightly divided these sale deeds into two parts; one is relating to the period prior to the issuance of notification under section 4 of the Act and the another is relating to the period subsequent to the issuance of the notification under section 4 of the Act. The reference court has also given reasons for not relying upon the sale deeds subsequent to the notification under section 4 of the Act on the ground that they are not within the reasonable period from the date of issuance of the notification under section 4 of the Act and also for the reason that they are not bona fide transactions and also for the reason that the land is not nearer to the lands under acquisition. In our opinion, the reference court was right in examining each and every sale deed and also the oral evidence of each witness giving oral evidence for proving such sale deed and was also right in rejecting such sale deeds on the grounds mentioned in each paragraph wherein such discussion has been made by the reference court. In our opinion, the reference court has rightly rejected the sale deeds except the sale deed at Exh. 30 and 31 produced and proved by the appellants before it. Amongst the sale deeds at Exh. 30 and 31, Exh. 30 is relating to the land bearing survey no.59 where there is a pond and, therefore, considering its lower level area and not the level land, the reference court has not taken into

account the price mentioned in Exh. 30. For taking into account the sale transaction at Exh. 31, the reference court has given reasons. The price reflected in the sale deed at Exh. 30 is lower than the price reflected in the sale deed at Exh. 31. The land of the sale deed at Exh.31 was at some distance from the lands under acquisition and this situation was considered and examined by the reference court considering the another map at Exh. 56. In light of these facts, the reference court has rightly taken into consideration the sale instance and the sale deed as per Exh. 31 being comparable instance of sale and it was within reasonable time from the date of notification under section 4 of the Land Acquisition Act. The reference court has also considered it over and above the bona fide transaction and the land relating the sale deed was nearer to the lands under acquisition. Learned Advocate Shri P. V. Nanavati is not able to show any infirmity and perversity in the Award. On the contrary, the finding recorded by the Reference Court is based upon legal evidence and sound principle. Learned Advocate Shri P.V.Nanavati is also not able to justify Rs.70/- per sq.mtr claimed by the appellant. The Reference Court has tasted and minutely examined each and every instances of sale while keeping in mind four principles as referred in Award. In view of these facts, according to our opinion, the reference court has rightly appreciated the evidence produced and proved before it and looking to the situation of the lands acquired by the Government, the reference court has rightly granted additional compensation to the appellants looking to the situation of each survey number in light of the sale deed at Exh. 31 and, therefore, according to our opinion, the reference court has not committed any error in granting the additional compensation to the appellants and we are in total agreement with the findings recorded by the reference court and therefore, we do not find any reason to interfere with the award of additional compensation made by the reference court. Therefore, the contentions which are raised by learned advocate Shri Nanavati cannot be accepted and same are rejected.

As regards the contention raised by Mr. P.V.Nanavaty that the appellants are entitled to have the benefits of the Amendment Act, 1984 in the Land Acquisition Act, 1894. Mr. Nanavaty has submitted that under section 23, sub section (2), in addition to the market value of the land, the Court shall in every case award a sum of 30 per centum of such market value in consideration of compulsory nature of acquisition and, therefore, it is his submission that the appellants are

also entitled to have the solatium not at the rate of 15 per cent but at the rate of 30 per cent considering the effect of the amendment. He has submitted that similarly, the appellants are also entitled to 9 per cent interest per annum under amended Section 28 of the Land Acquisition Act. He has submitted that by amendment carried out in the Land Acquisition Act, 1894 in the year 1984, it has been provided under section 30 sub section (2) that the provisions of sub section (2) of section 23 and section 28 of the Principal Act as amended by clause (b) of section 15 and section 18 of this Act respectively shall apply and shall be deemed to have applied also to and in relation to any award made by the collector or court or to any order passed by the High court or the Supreme Court in appeal against any such award under the Principal Act after 30th April,1982 the date of introduction of the Land Acquisition Amendment Bill, 1982 in the House of People and before the commencement of this Amendment Act. The amendment came into effect from 24th September, 1984. He has submitted that looking to the facts of the present case, the Additional Special Land Acquisition Officer made the award on 22nd October, 1980 and, thereafter, the reference court has awarded the additional compensation by its award dated 11th April, 1983 and, therefore, looking to the facts of this case, the reference court has passed award of additional compensation subsequent to 30th April,1982 and prior to 24th September, 1984 and, therefore, he submitted that looking to this amendment, the appellants are entitled to have solatium at the rate of 30 per cent on the total amount of compensation and 9 per cent interest on the total amount of compensation including the amount of solatium. He has also submitted that this aspect has been considered by the apex court in case of Union of India and another versus Raghuvirsingh [dead] by LRs etc. reported in AIR 1989 SC 1933 wherein it has been observed by the apex court as under :

> "There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) of amendment Act in respect of an award made by the Collector between 30th April 1982 and 24th September 1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the Court between April 30, 1982 and September 24, 1984, even though it be upon reference from an award made before April 30, 1982. The dispute is about the meaning of the words 'or to any order passed by the High Court or Supreme Court on appeal against

any such award' used in section 30(2) ? Are they limited, to appeals against an award of the Collector or the Court made between 30 April, 1982 and 24th September, 1984, or do they include also appeals disposed of between 30 April, 1982 and 24 September, 1984 even though arising out of awards of the Collector or the Court made before 30th April, 1982. It is significant to note that the Parliament has identified the appeal before the High Court and the appeal before the Supreme Court by describing it as an appeal against 'any such award'. The words ' any such award' are intended to have deeper significance and in the context in which those words appear in section 30(2) it is clear that they are intended to refer to awards made by the collector or court between 30 April, 1982 and 24 September 1984. In other words, section 30(2) of the amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the court is made between 30 April, 1982 and 24 September 1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before 24th September, 1984 or after that date all that is material is that the award by the Collector or by the Court should have been made between 30 April, 1982 and 24 September 1984. It cannot be said that the words 'any such award' only mean the award made by the Collector or court, and carry no greater limiting sense. No such words of description by way of identifying the appellate order of the High Court or of the Supreme Court were necessary. Plainly, having regard to the existing hierarchically structure of forum contemplated in the parent Act, those appellate orders could only be orders arising in appeal against the award of the collector or of the Court. "

Therefore, in view of the legal submissions made by Mr. Nanavaty on behalf of the appellants and also considering the effect of the amended provisions of 1984 in the Land Acquisition Act,1894 and considering the facts of the present cases that Award passed by Special Land Acquisition Officer dated 22-10-1980 and Reference Court has passed Award on 11-4-1983, meaning thereby subsequent to Amendment having effect from 30-4-1982, therefore, according to our opinion, the appellants are entitled to 30 per cent solatium on the total amount of compensation under section 23(2) of the Act and are also

entitled to have interest at the rate of 9 per cent on the total amount of compensation including the amount of solatium. Therefore, to that extent, award made by the reference court is required to be modified by awarding solatium at the rate of 30 per cent on the total amount of compensation instead of 15 per cent as has been granted by the reference court and interest at the rate of 9 per cent on the total amount of compensation including the amount of solatium.

In the result, all these appeals are allowed to the extent indicated hereinabove and Award of Reference Court is modified accordingly. It is directed to respondents to implement the judgment / order passed by this Court within period of six months from the date of receiving copy of this judgment and order. Office is directed to send immediately the Record and Proceedings with modified Award passed by Reference Court as per the said judgment and order. No order as to costs.

Dt.3.10.2002. [Kshitij R. Vyas, J.]

[H.K. Rathod, J.]

#Vyas#